

11
ITEL

8-291A044

October 17, 1988

No.

OCT-17 1988

Itel Rail Corporation

Date

Fee \$

65.00

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

RECORDATION NO. 15642-8 FILED 1988

Hon. Noreta R. McGee
Secretary

ICC Washington, D.C.

Interstate Commerce Commission
Washington, DC 20423

OCT 17 1988 - 11 33 AM

INTERSTATE COMMERCE COMMISSION

Re: Schedule No. 2 dated October 10, 1988, to Master Lease No. 2197-00 dated May 5, 1988, between Itel Rail Corporation, Itel Railcar Corporation and Hartford and Slocomb Railroad Company

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Schedule No. 2 under Master Lease No. 2197-00 dated May 5, 1988, between Itel Rail Corporation, Itel Railcar Corporation and Hartford and Slocomb Railroad Company, which was filed with the ICC on May 13, 1988, under Recordation No. 15642.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation and
Itel Railcar Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

Hartford and Slocomb Railroad Company (Lessee)
P.O. Box 2243
Dothan, Alabama 36302

This Schedule No. 2 covers one hundred sixty-nine (169) 5100 cubic foot, 70-ton, Plate C, RBL boxcars bearing reporting marks HS 11000-11168.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Department

100 411 11 33 AM '88
THU OCT 17 1988
MOTOR OPERATING UNIT

SCHEDULE NO. 2 TO MASTER LEASE NO. 2187-00
OCT 17 1988 11 55 AM

THIS SCHEDULE NO. 2 ("Schedule") to that certain Lease Agreement (the "Agreement") made as of May 5, 1988 between ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, severally, as lessors, and HARTFORD AND SLOCOMB RAILROAD COMPANY, as lessee ("Lessee") is made this 10th day of October, 1988, between ITEL RAILCAR CORPORATION ("Lessor") and Lessee.

Lessor and Lessee agree as follows:

1. All terms defined in the Agreement shall have the meanings defined therein when used in Schedule No. 2; provided, however, that the term "Car" when used in this Schedule shall mean only the Cars described in this Schedule.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig	Description	Numbers	Length	Dimensions		Doors Width	No. of Cars
				Inside Width	Height		
RBL	5100 cu. ft., 70-ton, 52'5" Plate C RBL Boxcar	HS 11000-11168	52'6"	9'4"	10'5"	16'	169

3. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on the date and at the location such Car is remarked pursuant to Subsection 3.A. ("Delivery") and shall continue as to all of the Cars described in this Schedule for three (3) years after the earlier of (i) the date on which the last Car described in this Schedule was remarked or (ii) sixty (60) days after the first Car described in this Schedule was physically delivered (the "Term"). Upon the Delivery of the final Car, Lessor shall notify Lessee in writing of the expiration date of the Term. Unless Lessee, within fifteen (15) days of the date of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date.
4. After each Car has been remarked, such Car shall be moved to the railroad lines of the Soo Line Railroad Company ("Assignee") pursuant to the Assignment Agreement dated August 4, 1988 ("Soo Line Assignment") between Lessee ("Assignor") and Assignee, a copy of which is attached hereto as Exhibit A. To ensure optimal use of the Cars, Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to assist in the issuance of movement orders with respect to such Cars to other railroad lines in accordance with the Interstate Commerce Commission ("ICC") and the Interchange Rules.

5. Lessor consents to Lessee's entering into the Soo Line Assignment; provided that Lessor shall perform Lessee's duties under the Soo Line Assignment, except the duties described in paragraph 6 therein, which shall be performed by Lessee; that Lessee shall, only upon Lessor's instructions or consent, exercise its option to terminate, extend, renegotiate or request free storage under the Soo Line Assignment; and that Lessee shall, if directed by Lessor, assign Lessee's interest in the Soo Line Assignment to any party designated by Lessor.
6. Lessor shall perform or cause to be performed and pay for all costs and expenses associated with the maintenance of the Cars described in this Schedule except as set forth in Section 5 of the Agreement. Lessee may make running repairs to those parts of the Cars specified in Exhibit B hereto. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.
7. Lessor agrees to reimburse Lessee, within thirty (30) days from Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by the Lessee resulting from: 1) ad valorem tax assessments on the Cars; and 2) any assessment, levy or impost relating to any Car, the Agreement or the delivery of the Cars which remained unpaid as of the date of the delivery of the Cars to Lessee or which are assessed, levied or imposed during the term of the Agreement, except taxes on income imposed on Lessee, gross receipts or sales or use tax imposed on the mileage charges and car hire revenue or sale or lease of the Cars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem returns associated with the Cars. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable to Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees, of such contest.

8. Rent

A. Definitions

- (i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee as of the date of this Schedule. Unless otherwise agreed by Lessor and Lessee, any lines purchased by Lessee or added to the Eligible Lines during the Term are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined in Subsection 8.A.(ii) hereinbelow).
- (ii) "Revenues" is defined as the total revenues that are earned or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines,

including, but not limited to, per diem and mileage, whether or not collected and received by Lessor and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.

(iii) The "Base Rent" is defined as ---
per
Car per calendar quarter. The Base Rent for any Car which is not subject to the Agreement for an entire calendar quarter shall be prorated at

- B. by each Car prior to and
during the term of the Soo Line Assignment.
- C. Upon the early termination or expiration of the Soo Line Assignment, Lessor shall receive by the Cars
while such Cars are off the Eligible Lines.
- D. (i) Upon any abatement, reduction or offset as described in Subsection 8.A. (ii), Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts.
- (ii) If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, then Lessee shall supply Lessor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.
- E. The calculations required in Section 8 shall be made within five (5) months after the end of each calendar year ("Final Calculations"). Lessor shall, prior to making such calculation, retain the revenues and other payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly year-to-date basis the approximate amounts owed under this Section 8, Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amount due both parties pursuant to this Section. Amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.
- F. If, with respect to any calendar quarter or quarters, Revenues received by Lessor are less than the Base Rent, Lessor may, at any time, at its option and upon not less than ten (10) days' prior written notice to Lessee, terminate the Agreement as to such Cars as Lessor shall determine.

- G. If any Car has remained on Lessee's property because Lessee has not given preference to the Cars as specified in Subsection 3.B., Lessee shall be liable for and remit to Lessor an amount equal to the revenues which would have been generated if such Car had been in the physical possession and use of a railroad for the entire period during which such Car is on Lessee's property and had travelled :
9. Except as expressly modified by this Schedule No. 2 all terms and provisions of the Agreement shall remain in full force and effect.
10. This Schedule No. 2 may be executed by the parties hereto in any numbers of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAILCAR CORPORATION

HARTFORD AND SLOCOMB RAILROAD COMPANY

BY: _____

TITLE: _____

DATE: _____

AD Hughes
President
October 10, 1988

BY: _____

TITLE: _____

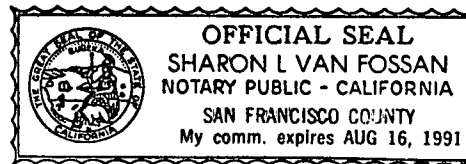
DATE: _____

G. J. Jackson III
President
October 4, 1988

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 10th day of October, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Railcar Corporation, that the foregoing Schedule No. 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public



STATE OF ALABAMA)
) ss:
COUNTY OF HOUSTON)

On this 4 day of October, 1988, before me personally appeared C.F. Fischer, III, to me personally known, who being by me duly sworn says that such person is President of Hartford and Slocomb Railroad Company, that the foregoing Schedule No. 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jean Thompson
Notary Public

EXHIBIT B

Running Repairs; RBL Boxcars

Angle Cocks	Wheels
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Air Hose Supports
Hand Brakes	Coupler Gears
Brake Beams and Levers	Load Divider Repairs (Not Replacement)
Truck Springs	
Door Hardware (Not Replacement of Door)	

Initial Term or any Extended Term as to some or all of the Cars by providing not less than thirty (30) days prior written notice to Assignee.

- C. At any time after the first twelve (12) months of the Initial Term, either party shall have the option, upon providing one hundred twenty (120) days' prior written notice to the other party, to terminate fifty (50) of the Cars from this Assignment Agreement. If either party exercises said option, Assignee shall remove the fifty (50) Cars (which shall be designated by Assignor) from the provisions of CSR 16 and CSD 145 effective as of the effective date of such notice.
4. Assignee shall comply with the handling carrier's obligations under AAR Interchange Rules while the Cars are in Assignee's possession. Assignee agrees to so use the cars furnished by Hartford and Slocumb under this agreement as to produce the maximum amount of car hire earnings consistent with
5. ~~Assignee shall not be permitted to load or unload any cars or to use any cars assigned to Assignee from other parties subsequent to the date of this Assignment Agreement purchased by Assignee subsequent to the date of this Assignment Agreement or interchanged from other railroads, provide that, however, that nothing contained in this Section shall in any event prevent or prohibit Assignee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor. If any Car remains on Assignee's lines because Assignee has not given preference to the Cars as specified in this Section, Assignee shall be liable for and remit to Assignor an amount equal to the Revenues which would have been generated if such Car had been in the physical possession and use of another railroad for the entire period during which such Car is on Assignee's railroad line and had such Car traveled during such period.~~
6. If any Car returns to Assignor's line as a result of Assignee not filing the assignment pool code properly, Assignee shall be responsible for all costs associated with returning such Car to Assignee. Assignor shall use its best efforts to prevent any Car from being interchanged onto its lines during the term of the Assignment Agreement, including advising Assignor's connecting carrier that the Cars have been placed into an assignment pool on Assignee's lines and that the connecting carrier should not return such Cars to Assignor during the term of the Assignment Agreement.
7. When used in this Assignment Agreement, each of the following terms shall have the definitions indicated:
- A. "Eligible Lines" is defined as the railroad lines owned and operated by Assignee as of the date this Schedule is executed by the parties. Unless Assignor and Assignee agree otherwise, any lines purchased by Assignee or added to the Eligible Lines or any Eligible Lines sold to another party, effective as of the date of such sale, during the Initial Term or any Extended Term are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined hereinbelow).
- B. "Revenues Rates" is defined as the hourly and mileage car hire rates specified for each Car in the Hourly and Mileage Car Hire

Rate Table published in the April 1, 1988 edition of The Official Railway Equipment Register.

- C. "Revenues" is defined as the total revenues, calculated at the Revenue Rates, that are earned or due for the use and handling of the Cars on all railroad lines including the Eligible Lines, including, but not limited to, per diem and mileage, whether or not collected and received by Assignor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Assignee.

8. Assignee shall be entitled to

while such Car is on the Eligible Lines. If any Car is on the Eligible Lines in any calendar month in excess of the Maximum Relief, then Assignee shall be liable for and shall pay Assignor the applicable per diem in excess of the Maximum Relief.

9. Assignor shall retain Cars while the Cars are
off the Eligible lines and as well as receive all
on the Eligible Lines. while the Cars are

10. Per diem relief up to the Maximum Relief will be deducted from each monthly car hire report ("Report") as follows:

Assignee shall allow all hours and miles earned each month, but shall deduct per diem relief allowed herein, not to exceed the Maximum Relief, by making a one-line money adjustment from the report, with per diem relief detail contained on the deduction sheet(s) attached to the Report. The hours being deducted shall not be reported via the AAR Car Hire exchange tape.

11. A. In the event that, as a result of any action or inaction by Assignee, Assignor shall receive or earn for the use of any Cars, Revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified in Subsection 7.B., Assignee shall pay to Assignor, within ten (10) days of Assignor's request, an amount equal to the difference between the Revenues such Cars would have earned at the Revenue Rates and the amount of revenues actually received or earned for such Cars.

- B. Should any abatement, reduction or offset occur as a result of any action or inaction of Assignee, Assignee shall, within ten (10) days of Assignor's request, reimburse Assignor the amount of such abatement, reduction or offset.

- C. If, at any time during the Agreement, Assignee operates lines/ ~~other than the Eligible Lines, Assignee shall supply Assignor with~~ ~~records which shall be furnished to Assignor for each Car reported to Assignor~~ ~~lines from the movement of such Car on any other lines operated by Assignor~~ Assignor, at its option, may with 30 days written notice cancel this agreement.

12. During the term of the Assignment Agreement, Assignor may, at its

expense, replace any or all of the Cars with similar RBL boxcars upon not less than ten (10) days' prior written notice to Assignee.

13. Assignor is responsible for normal maintenance and repair expenses except as provided below and except for any transportation costs incurred pursuant to this paragraph, which shall be at Assignee's sole expense. Assignee shall be responsible for and shall pay all costs and expenses of all repair work or other work or materials required because of (i) damage or other conditions caused by Assignee's negligence or misuse in loading or unloading, or by use other than as permitted under this Assignment Agreement; (ii) damage for which Assignee is responsible under applicable AAR Rules; (iii) Assignee's failure to note any damage to any Car that returns to its lines, the repair of which is the responsibility under AAR Rules of any third party railroad. Assignee shall promptly notify Assignor of any damage to, defect in, need of repair to, or destruction of any Car. For any damaged Car that requires repairs other than running repairs, car hire (time and mileage) shall be governed by applicable Car Hire and Car Service Rules. In no event shall Assignee place any Car for repair at a private contract repair facility, or allow repair by a private contractor on the property of Assignee without Assignor's prior approval. Any such repair must be performed under the direction and control of Assignor. If, in any calendar year during the term of the Assignment Agreement, the total cost of repairs made to the bulkheads of the Cars, when divided by the total number of Cars subject to the Assignment Agreement during that year, exceeds one hundred dollars (\$100) per Car, then Assignee shall be responsible and shall pay for all bulkhead repair costs in excess of one hundred dollars (\$100) per Car within thirty (30) days of receiving an invoice ~~from Assignor~~ and applicable billing repair cards from Assignor. *ME*
14. Upon expiration or termination of this Assignment Agreement with respect to any Car(s), Assignee shall surrender possession of such Car(s) to Assignor. Assignee shall insure that each Car returned to Assignor upon the expiration or termination of the Assignment Agreement shall be (a) in the same condition, order and repair as when delivered to Assignee, ~~and except for repairs which are Assignor's responsibility under Section 13~~ *hereo:* (b) in interchange condition in accordance with AAR normal wear excepted, (c) suitable for loading, (d) free from all accumulations or deposits from commodities transported in or on it while in the service of Assignee, and (e) free of any and all Rule 95 damage. Assignee shall remove the Cars from the provisions of CSR 16 and CSD 145, and shall deliver the Cars to a point on the Eligible Lines to be designated by Assignor or shall use its best efforts to provide final outbound loads for each Car. In the event that the expiration or termination of this Assignment Agreement is due to the breach by Assignee of any term or condition of this Assignment Agreement which is not cured within thirty (30) days after receipt of ^{written} notice of such breach, then at Assignor's option and Assignee's expense, Assignee shall remark the Cars to bear new reporting marks to be provided by Assignor, and shall surrender possession of each car to Assignor subject to the terms and conditions otherwise provided in this Paragraph 14. *3/1*
15. Assignee's rights shall be subject and subordinate to the rights of Assignor, of any lessor, and of any owner or secured party under any financing agreement with respect to the Cars. Accordingly, following notice to Assignee from any such lessor, secured party or owner that an event of default has occurred at any time (including at a time prior to

the effective date of this Assignment Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.

16. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, or when transmitted and received by telex addressed as follows:

If to Assignor:

Hartford and Slocomb
Railroad Company
55 Francisco, 5th Floor
San Francisco, CA 94133
Attention: Manager, Car Hire
Accounting

If to Assignee:

Soo Line Railroad Company
P.O. Box 530
Minneapolis, MN 55440
Attention: Mr. Mark Nordling
Director, Equipment Utilization

17. This Assignment Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.
18. This Assignment Agreement may be executed in two counterparts and such counterparts together shall constitute one contract.

HARTFORD AND SLOCOMB RAILROAD COMPANY

SOO LINE RAILROAD COMPANY

By: E. J. Jordan Jr.

Title: President

Date: 9-8-88

By: M. Nordling

Title: VP - Equip. Mgmt.

Date: 8/5/88

EXHIBIT A

Certificate of Delivery

Assignment Agreement dated _____, 1988

**Assignor's
Reporting
Marks and Numbers**

**Date Delivered
to Assignee**

The Initial Term of the Assignment Agreement dated _____,
1988 between Hartford and Slocomb Railroad Company and Soo Line Railroad
Company shall expire on _____, 19____

**Hartford and Slocomb Railroad
Company**

By: _____

Title: _____

Date: _____

ADDENDUM A

3. A. The term ("Initial Term") of this Assignment Agreement, with respect to each Car, shall commence on the day that such Car is first interchanged onto Assignee's lines after the full execution of this Assignment Agreement ("Delivery") and shall expire as to all of the Cars three (3) years from the earlier of (i) the date of Delivery of the last Car or (ii) the sixtieth (60th) day after the day of Delivery of the first Car, except that Assignee is granted fifteen (15) days from Delivery to reject any car not in accordance with AAR and FRA Regulations, found to be not suitable for loading, including defective bulkheads or found with Rule 95 damages. Any car rejected for the above stated reason(s) will either be repaired by Assignee at Assignor's expense or routed to Assignor's designated repair point at Assignor's option. Assignor shall not collect revenues for cars rejected for the above stated reasons from the time of initial delivery until the time the car is repaired and accepted by Assignee. Upon the Delivery of the final Car, Assignor shall issue to Assignee a fully-executed Certificate of Delivery in the form of Exhibit A hereto that shall contain the expiration date of the Assignment Agreement with respect to all the Cars as determined by Assignor. Unless, within fifteen (15) days of the date of such Certificate of Delivery, Assignee demonstrates to the reasonable satisfaction of Assignor that such expiration date is incorrect, Assignee shall be deemed to have concurred with such expiration date. Above, as to delivery, does not pertain to 19 LNAC marked cars.

EXHIBIT B

Running Repairs: RBL Boxcars

Angle Cocks
Air Hose
Train Line
Operating Levers and Brackets
Sill Steps
Grab Irons
Brake Shoes
Brake Shoe Keys
Brake Connecting Pin
Brake Head Wear Plates
Air Brakes
Hand Brakes
Brake Beams and Levers
Truck Springs
Door Hardware
(Not Replacement of Door)

Wheels
Yokes
Knuckles/Pins
Slack Adjuster
Couplers
Draft Gears
Coupler Carriers
Center Plate Repair (Not
Replacement of Center Plate)
Cotter Pins
Roller Bearings
Air Hose Supports
Coupler Gears
Load Divider Repairs
(Not Replacement)

the railroad
does this work
and Assign
added to the
company, effective
the date of the
railroad company (a
November 1970)

is the hourly and
in the hourly and